PDF PAGE 1, COLUMN 1

ASK NEW FRANK TRIAL ON 115 COUNTS

MANY ERRORS LAID TO COURT; CHARGE MADE OF JURY INTIMIDATION

Citing 115 counts wherein the count is declared to have erred in the trial of Leo M. Frank, Luther Z. Rosser Wednesday fled with the criminal court a motion for a new trial for the pencil factory superintendent, sentenced to hang October 10 for the murder of Mary Phagan.

The motion, contained in nearly two hundred typewritten sheets, includes an exhaustive research of the trial and each count, as it is brought out, is dissected.

The motion will be placed in the hands of Solicitor Dorsey for his inspection and reply and the first hearing will be given on October 4.

Principal among the objections offered in the motion is the conduct of the crowds which attended the trial. Frank's attorneys openly declare the jury was intimidated, and despite their objections no effort was made to stop the applause which time and again rang out in the courtroom.

"Threats to clear the room were made by the trial judge," the motion states, "but they were absolutely disregarded and the threats were not enforced, despite the objections of counsel for the defense."

Hits at Conley Testimony.

The motion struck also at the admission of the lascivious testimony of Jim Conley, the negro sweeper. The testimony referred to included that wherein the negro declared on the witness stand that Frank had entertained women in the factory on holidays while he stood watch at the front door.

"Lasciviousness is not one of the character traits involved in a plea of murder and can not be held in a murder trial, even when the defendant has put his character in issue," the motion stated.

The testimony of Dr. H. F. Harris, Country Physician, also was objected to. The motion declared that the physician's testimony was "argumentative and not a statement of fact, scientifically or otherwise." Dr. Harris had gone extensively into an analysis of the cabbage taken from the stomach of Mary Phagan, which she had eaten on the morning of her tragic death.

Objection was also made to the testimony of Newt Lee, the negro night watchman, who first found the Phagan girl's body, wherein he testified as to Frank's nervousness and his method of conversation when the two were brought together at the police station following the murder.

The testimony of Detective Black that Frank was excited, while Lee was composed, at this time also was made the point of an objection. Black's statements of a conversation which he had had with Frank before the murder, when on a private investigation, were objected to when the detective compared them to the conversation which he held with the pencil factory superintendent after the girl was murdered.

Charge Errors to Court.

The petition charges that the court erred in allowing the testimony of Miss Mary Pirk, who charged immoral conditions at the pencil factory, and in admitting other testimony hinting at the same thing over the protests of the defense.

Error is charged in the admission of Miss Irene Jackson's evidence concerning a conversation with Detective Starnes about dressing-room conditions, and an incident in which Frank looked into the room when Miss Emily Mayfield was not dressed.

Another count is based on the admission of Scott's testimony concerning a conversation he had with Mrs. Arthur White regarding her seeing a negro on the first floor of the factory. The State claimed this negro was Jim Conley.

Solicitor's Conduct Attacked.

The court is charged with error in allowing the Solicitor to declare that he was prepared to prove the charges

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PLEA FOR NEW TRIAL FOR

FRANK, DOOMED SLAYER IS BASED ON 115 COUNTS

Continued From Page 1.

of immorality against Frank. The petition charges specific error to the Solicitor's declaration. "I am not fourflushing," made in the presence of the jury. It is declared that this declaration had undue influence on the jurors' minds, leading them to unfair inference.

Another error is laid to the court in allowing over the defense's objection to Solicitor's questions tending to show that Montag Brothers had attempted to influence the Pinkertons and had tried to make the detective agency shield the prisoner. The petition declares that none of the evidence concerning the employment of the Pinkertons was admissible.

The overruling of any evidence from Street Car Inspector Leach concerning the dismissal or punishment of employees for being ahead of schedule time is another count.

Error is charged in the questioning of J. N. Minar, a reporter for The Georgian. The defense claims that the questions concerning whether he went to interview the Epps family merely as a reporter should never have been allowed. The questions were asked, the petition says, to influence the jury and no attempt to prove the intimations ever was made.

In refusing to allow Miss Hall to testify to a telephone conversation in rank told her about work to be done that tragic day another error is charged and another in the admission of Philip Chambers' reference to Gantt, tending to show that Frank had tried to throw suspicion on Gantt and shield himself.

B'nai Brith Question Recalled.

The court also errored. It is held, in declining to allow Dr. David Marx to give testimony as to the character of the Jewish organization known as the B'nai Brith.

Defendant's counsel, it is said, stated at the time that Dr. Mary would testify that, while the B'nai Brith was an international Jewish charity organization, its charity did not extend to giving aid to persons charged with misdemeanors of criminal law.

The State objected to this, it is further stated, and the court sustained the objection and so the court errored in this respect, for the reason that the Solicitor General, in his insinuations to the jury and in his speech, strongly intimated that Frank was receiving moral and financial support by reason of his membership in B'nai Brith.

The court also errored, it is held, in permitting Mr. J. J. Wardlaw to be asked certain questions in regard to Frank's alleged conduct on a Hapeville car with Mary Phagan. She answered, it is said, "No" to all questions. The defendant objected to the questions because while the witness denied any knowledge by hearsay or otherwise of the wrong asked about, the mere asking of such questions, the answer to which must have been irrelevant! And prejudicial, was harmful to the defendant, and the court erred in permitting questions to be asked no matter what the answers might have been.

Character Ruling Attacked.

The court further erred because, although the defendant had put his character in issue, admitting such testimony, the State

could not reply by proof of improper or immoral conduct with women.

A reputation for lasciviousness is not involved in that general character that is material where the charge is murder, according to the defense.

The court erred, it is said, in permitting the witness, W. E. Turner, over the objection of the defendant, to tell of a conversation he overheard between Frank and Mary Phagan, in which Frank told her he was superintendent of the factory, and of Mary Phagan backing away from him, and of Frank walking toward her. This was prejudicial because it was a distinct transaction apart from the issues in the case intended to prejudice the jury.

The court erred in permitting W. P. Merck, over objection, to tell of an engagement he had with Daisy Hopkins, and to tell of her remarks that she had just been to the pencil factory.

The court erred in admitting the minutes of the State Board of Health showing the controversy of Dr. Harris and Dr. Westmoreland. This was prejudicial to the defendant, centering the minds of the jury men on something different from the issues in the case. It erred in permitting E. H. Pickett to testify, over objections, about Menola McKnight’s statements.

Hit Car Evidence.

The court erred in permitting J. C. McEwen, street car man, to testify as to the arrival of the Euclid avenue car—stating that it would have to be ahead of the White City car to cut it off. Objecting also was cited to the testimony of Henry Hoffman, another street car man who testified about cars coming in ahead of time.

Objections were cited to the testimony of J. M. Gantt, that the clocks of the pencil factory were not accurate, on the ground that the evidence was misleading.

Other objections were: Against the testimony of Harry Scott, admitted over objection, that Frank did not inform him that Conley could write.

Against L. T. Kendrick's testimony about the condition of the clocks while he was in the factory.

Attack Character Evidence.

That the court erred in allowing witnesses to testify that Frank's character for lasciviousness was bad.

"To permit this evidence," states the petition, "was highly prejudicial to the defendant. It attacked his moral character, and while such an attack would not tend to convict him of murder nor show him a person of such character as would likely convict him of murder nor show him a person of such character as would likely commit murder its introduction prejudiced the jury against him."

It charges that the court erred in permitting Dewey Hewitt, who was brought to Atlanta from the Home of the Good Shepard, in Cincinnati, to testify as to Frank's character, that the court erred also in admitting the following evidence.

The testimony of Miss Cato that she saw Frank go into a private dressing room with Miss Rebecca Carson.

That the court erred in refusing to give certain pertinent legal charges in the language requested by the defendant's counsel.

The petition states the judge was requested to make this charge:

"If the jury believed from the evidence that the theory or hypothesis that James Conley may have committed this crime is just as reasonable as the theory that the defendant may have committed this crime then under the law, it would be your duty to acquit the defendant.

Applause in Court Cited.

It charges that the court erred in declining to grant a motion for a mistrial on account of the applause.

That the court erred in refusing to clear the courtroom. Says the petition:

“The passion and prejudice of those in the crowded courtroom was so much aroused against the defendant that he could not obtain a fair and impartial trial. The very presence of that crowd was a menace to the jury.”

It further charges that the court erred in permitting Attorney Hooper to argue to the jury that the failure of the defense to cross-examine the State’s female character witnesses was because a cross-examination would have brought out specific instance of immorality.

A similar objection is made to Dorsey’s argument.

One objection to Dorsey’s speech was his reasons for Mrs. Frank’s failure to visit her husband.

It charges that the court erred in permitting Dorsey to intimate that the defense called some of the expert witnesses because they were physicians of some of the jurors.

The petition charges that J. A. Hensley and Mr. Johannon were prejudiced against the defendant when they were selected as jurors, and were not fair and impartial jurors.

Other Points in Motion.

Other interesting extracts from the petition are.

Public sentiment was greatly aroused against the defendant. The courtroom was quite a small room and during the argument of the case every seat was taken. The jury, in going to and fro was dependent on the small passage ways made by the officers of the court. The jurymen could hear the whispers of the crowd.

During the argument of the Solicitor, Mr. Arnold made an objection and the crowd and laughingly jeered at him so that Mr. Arnold appealed to the court.

On Saturday, prior to the rendition of the verdict, excitement in and about the courtroom was so apparent as to cause apprehension in the mind of the court as to whether he could safely continue the trial Saturday afternoon.

Tells of Court Conference.

In making up his mind his honor conferred with, while on the stand and in the presence of the jury, the chief of police of Atlanta and the colonel of the Fifth Georgia Regiment. The public press, apprehending trouble also, united in a request to the court that he not continue the court on Saturday.

So court was adjourned until Monday morning.

But public excitement had not subsided Monday morning. When the Solicitor entered the courtroom he was vociferously cheered by the large crowd—ladies and gentlemen—present, by stamping their feet and clapping hands while the jury was not 20 feet away in their rooms.

While Mr. Arnold was making a motion for a mistrial and while taking testimony to support it the crowd applauded.

Cheers for Dorsey Recalled.

When the jury was finally charged by the court and retired to consider their verdict, and when Mr. Dorsey left the courtroom, a large crowd on the outside of the courthouse and in the street cheered by yelling and clapping hands and yelling “Hurray for Dorsey.”

When it was announced that the jury had agreed upon a verdict the court felt constrained to clear the courtroom, but when the verdict was rendered a crowd of more than 1,000 people outside raised a mighty shout of approval.

The court erred in not leaving it to the jury to say whether or not, under the facts, the witness Conley was an accomplice.

Allege Technical Errors.

The court further erred in not charging the jury that if, under the instructions given them, they found Conley was an accomplice of Frank, they could not convict Frank under the testimony of Conley alone, but that to do so there must be a witness other than Conley alone, but that to do so there must be a witness other than Conley in circumstances corroborating the evidence of Conley.

The court erred, over the objection of the defendant, in allowing the witness, Lewis Ingram, to testify as to the street car coming in ahead of time. The court erred for the same reason in permitting the witness, W. D. Owens, to testify as to the time.

The court erred in charging the jury as follows:

“Is Leo Frank guilty? Are you satisfied of that beyond a reasonable doubt from the evidence in this case or is his plea of not guilty the truth?”

Reason for Objection.

“The court erred in putting the proposition of the defendant’s guilt or innocence to the jury in this manner, because the effect of the same was to put the burden upon the defendant of establishing his plea of not guilty and the further effect was to impress upon the jury, that, unless they believed that the defendant’s plea of not guilty was the truth that they could not acquit him, and even though they did not believe his plea of not guilty to be true, it left out entirely the consideration that if they still had a reasonable doubt in their minds of his guilt they should acquit him.”

Twenty-five pages of the petition are devoted to objections to Solicitor Dorsey’s speech. The various objections to his arguments that were made in court are recited and urged as grounds for a new trial. The court is charged with having erred in

performance putting certain comparisons between the Durrant, Richeson and Wilde cases and the Frank case.

Mentions Vain Request.

The petition says that a new trial should be granted because of the following grounds:

The Solicitor General having, in his concluding argument, made the various statements of fact about the Durant case, as shown in the preceding grounds of this motion, the defendant requested the court, in writing, before the judge began his charge, to charge the jury as follows, which request the judge refused to grant and thereupon committed error:

“The jury was instructed that the facts in other cases read or stated in your hearing are to have no influence upon you in making your verdict. You are to try this case upon its own facts and upon the opinion you entertain of the evidence here introduced.”

PDF PAGE 2, COLUMN 7

DORSEY DISSECTS FRANK PLEAS

HEARING OF NEW TRIAL

MOTION CERTAIN TO BE POSTPONED SATURDAY

It was regarded as absolutely certain Thursday morning that the hearing of the Frank motion for a new trial would be postponed when it is called by Judge Roan Saturday morning.

The last doubt about the postponement was removed following a statement of Solicitor General Hugh Dorsey who declared that it would take him from now until Saturday and perhaps longer to check up the brief of evidence alone.

“The evidence is quite a bulky affair, as it is contained in nine volumes, each one of which must be examined with the utmost care.”

Huge Task Checking Evidence.

Although it had been announced that the amended motion would be placed in the Solicitor’s hands Wednesday at noon, this was found to be impossible because of the magnitude of the work of checking up the evidence. Attorney Rosser’s clerks worked all the afternoon in an effort to get it to the Solicitor Thursday morning. It probably will be in Mr. Dorsey’s hands before noon Thursday.

Exactly 115 instances are cited in the amended motion as reasons why Leo Frank should be granted a new trial. Foremost among these are citations charging that jury was influenced by

the various forms of popular clamor for the conviction of the prisoner and alleging bias and prejudice against the defendant on the part of two members of the jury, Henslee and Johenning.

On several different counts the court is attacked because of its alleged fail clear the court room when the alleged prejudice of the crowd was in evidence. Reference is made also to the “jeering laughter” of part of the crowd when Attorney Arnold commented on certain of the Solicitor’s remarks.

Dorsey’s Durant Speech Hit.

A large part of Solicitor Dorsey’s speech, containing reference to the California slapper. Durant, as well as others, also is attacked on the grounds that it was over the protest of the defense.

The motion, which will be placed in the Solicitor’s hands Thursday, is an amendment to the formal motion presented to the court on the day Frank was sentenced to hang. The formal motion was merely a skeleton affair and contained but the merest outline of evidence contained in the complete papers.

The amended motion covers 173 closely typewritten pages and goes into the most minute detail on various points wherein it is alleged the court erred in not declaring a mistrial. That it will take the Solicitor at least four or five days to prepare an answer is regarded as certain.

PDF PAGE 3, COLUMN 3

FRANK JUROR DENIES CHARGE OF PREJUDICE

SOLICITOR CERTAIN

TO GET DELAY

Dorsey Unable to Prepare Data to Fight New Trial Motion by Saturday.

With the prospect Thursday of a postponement of the hearing of the Frank motion for a new trial when it comes up Saturday, there came also the positive assurance that Solicitor Dorsey would have absolute denials from the two jurors charged with prejudice in the motion.

Marcus Johenning, No. 161 Jones avenue, one of the jurors, declared Thursday that the accusation was a complete falsehood.

“I served on that the jury because I did not want to try to be out of doing so,” said Johenning, “even though I would gladly have escaped the work. And now, to accuse me of having told a falsehood in secure the month’s service is rank injustice.”

“I lost money through neglect of my business, and there was not a man on the jury who had anything to gain, other than to do his duty as a citizen. If there are any persons who have made affidavits that we did not do Frank justice, they have lied outright.”

Henslee’s Friends Tell of Denial.

J. A. Henslee, a travelling salesman and second juror charged with having been prejudiced, has moved to Barnesville since the end of the Frank trial. However, his Atlanta friends Thursday declared that he had made strenuous denials to them of the accusation when became public some time ago.

The last doubt about the postponement was removed following a statement of Solicitor Dorsey, who declared that it would take him from new until Saturday and perhaps longer to check up the brief of evidence alone.

The Solicitor added however, that he would plunge into the subject immediately with the view of preparing his answer at the earliest possible moment. Although he refused to venture an assertion as to the length of the delay, it is believed that the hearing will be postponed longer than one week.

The judge has it in his power to proceed with the hearing regardless of the many requests of the Solicitor or the defense but it is certain that no such ruling will be invoked Saturday.

“The motion has not been served on me,” said Mr. Dorsey Wednesday morning, “but without regard to the amended motion, it will take me from now until Saturday, even longer to check up the brief of evidence alone.”

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Continued on Page 2, Column 6.

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PDF PAGE 4, COLUMNS 1, 3, 4, & 7

PDF PAGE 4, COLUMN 1

FRANK JUROR DENIES CHARGE OF BIAS

PDF PAGE 4, COLUMN 3

Slaton Sets Days For Clemency Pleas

Governor Slaton has promulgated a rule that hereafter petitions for clemency will be heard in the executive offices on the fourth Thursday and Friday of each month.

The Governor is forced to the adoption of this rule in order to find time for other public business.

PDF PAGE 4, COLUMNS 4 & 5

TWO FRANK JURORS CHARGED WITH BIAS

J. A. HENSLEE

MARCELLUS JOHENNING

PDF PAGE 4, COLUMN 7

SOLICITOR CERTAIN TO GET DELAY IN WHICH TO PREPARE EVIDENCE

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Continued on Page 2, Column 4.

PDF PAGE 10, COLUMN 4

Continued From Page 1.

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Leo Frank Victim of Mob Rule, Says Rabbi

SAVANNAH, Oct. 2—Rabbi George Soloman in his annual New Year sermon to-day declared that Leo M. Frank was the victim of mob rule and racial prejudice, and that the courts were doing nothing but reflecting the sentiment of an excited populace.

Rabbi Solomon compared the case to the Godbee trial wherein a woman directly guilty of a double slaying, was only sentenced to life imprisonment whereas, he said. Frank, only remotely connected, had been sentenced to hang. He blamed it on the idle mob that crowded the court.

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“I made no utterances before the trial that would disqualify me for jury service. Friday before the case was called, I was informed that I had been drawn as a talesman. I did not mention that to anyone but my business partner, and that was for business reasons.”

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Continued on Page 2, Column 5.

PREJUDICE DENIED BY FRANK JURYMAN

Continued From Page 1.

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PDF PAGE 6, COLUMNS 3 & 5

PDF PAGE 6, COLUMN 3

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“As soon as I can see the affidavit, we will show that is flimsier than the paper on which it is written.”

Henslee’s Friends Tell of Denial.

J. A. Henslee, a travelling salesman and second juror charged with having been prejudiced, has moved to Barnesville since the end of the Frank trial. However, his Atlanta friends Thursday

declared that he had made strenuous denials to them of the accusation when became public some time ago.

The last doubt about the postponement was removed following a statement of Solicitor Dorsey, who declared that it would take him from new until Saturday and perhaps longer to check up the brief of evidence alone.

The Solicitor added however, that he would plunge into the subject immediately with the view of preparing his answer at the earliest possible moment. Although he refused to venture an assertion as to the length of the delay, it is believed that the hearing will be postponed longer than one week.

The judge has it in his power to proceed with the hearing regardless of the many requests of the Solicitor or the defense but it is certain that no

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PREJUDICE DENIED

BY FRANK JURYMAN

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such ruling will be invoked Saturday.

“The motion has not been served on me,” said Mr. Dorsey Wednesday morning, “but without regard to the amended motion, it will take me from now until Saturday, even longer to check up the brief of evidence alone.”

“The evidence is quite a bulky affair, as it is contained in nine volumes, each one of which must be examined with the utmost care.”

Huge Task Checking Evidence.

“Although it had been announced that the amended motion would be placed in the Solicitor’s hands Wednesday at noon, this was found to be impossible because of the magnitude of the work of checking up the evidence. Attorney Rosser’s clerks worked all the afternoon in an effort to get in to the Solicitor Thursday morning. It probably will be in Mr. Dorsey’s hands before noon Thursday.

Exactly 115 instances are cited in the amended motion as reasons why Leo Frank should be granted a new trial. Foremost among these are citations charging that jury was influenced by the various forms of popular clamor for the conviction of the prisoner and alleging bias and prejudice against the defendant on the part of two members of the jury, Henslee and Johenning.

On several different counts the court is attacked because of its alleged fail clear the court room when the alleged prejudice of the crowd was in evidence. Reference is made also to the “jeering laughter” of part of the crowd when Attorney Arnold commented on certain of the Solicitor’s remarks.

Dorsey’s Durant Speech Hit.

A large part of Solicitor Dorsey’s speech, containing reference to the California slapper. Durant, as well as others, also

is attacked on the grounds that it was over the protest of the defense.

The motion, which will be placed in the Solicitor's hands Thursday, is an amendment to the formal motion presented to the court on the day Frank was sentenced to hang. The formal motion was merely a skeleton affair and contained but the merest outline of evidence contained in the complete papers.

The amended motion covers 173 closely typewritten pages and goes into the most minute detail on various points wherein it is alleged the court erred in not declaring a mistrial. That it will take the Solicitor at least four or five days to prepare an answer is regarded as certain.

Leo Frank Victim of Mob Rule, Says Rabbi

SAVANNAH, Oct. 2—Rabbi George Soloman in his annual New Year sermon to-day declared that Leo M. Frank was the victim of mob rule and racial prejudice, and that the courts were doing nothing but reflecting the sentiment of an excited populace.

Rabbi Solomon compared the case to the Godbee trial wherein a woman directly guilty of a double slaying, was only sentenced to life imprisonment whereas, he said. Frank, only remotely connected, had been sentenced to hang. He blamed it on the idle mob that crowded the court.

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Slaton Sets Days For Clemency Pleas

Governor Slaton has promulgated a rule that hereafter petitions for clemency will be heard in the executive offices on the fourth Thursday and Friday of each month.

The Governor is forced to the adoption of this rule in order to find time for other public business.

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Detective Black Has

Gun Duel With ‘Tiger’

Detective John Black had a narrow escape Wednesday night when two bullets fired by Jim Mills, a negro, grazed his hat.

A duel took place under the Courtland street viaduct between Black and the negro, who was charged with operating a blind tiger. The struggle was brought to a conclusion by the arrival of Official Milan, who pounced upon the negro’s back.

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Policemen Invited to Hear Special Sermon

Many members of Atlanta’s police department who are off duty Sunday night will attend the Second Baptist Church in a body, where the pastor Dr. John E. White, will deliver a special sermon on “A Policeman and His Duty.”

The entire center section of the church will be reserved for the policemen, who have been specially invited.

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TWO FRANK JURORS CHARGED WITH BIAS

J. A. HENSLEE

MARCELLUS

JOHENNING.